

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Platform II Lawndale, LLC,) No. 22 B 07668
) Chicago, Illinois
) 2:30 p.m.
Debtor.) July 10, 2024

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE DEBORAH L. THORNE

APPEARANCES:

For the Debtor: Mr. Kevin Sterling;
For Greenlake: Mr. Adam Toosley;

Prepared By: Amy Doolin, CSR, RPR
U.S. Courthouse
219 South Dearborn
Room 661
Chicago, IL 60604.

THE CLERK: Taking up this court's
2:30 set matter, Platform II Lawndale, LLC.

MR. STERLING: Good afternoon, Your Honor. Kevin Sterling on behalf of the debtor.

THE COURT: Good afternoon.

MR. TOOSLEY: Good afternoon, Your Honor. Adam Toosley for secured creditor Greenlake.

11 MR. TOOSLEY: So, we were here last --
12 I think it was May 15th was the date. And on that
13 date, Your Honor on our motion issued a rule to show
14 cause against Mr. Krone and asked that he come today
15 to provide testimony to the extent necessary as to
16 the violation.

17 So, I don't think we actually set it
18 for an evidentiary hearing, you know, as far as
19 exhibits or anything like that. So it was kind of
20 just continued --

THE COURT: Right.

22 MR. TOOSLEY: -- generally for that
23 purpose. But today, because originally it was -- you
24 know, obviously, we've briefed this issue on the
25 contempt. We've had four or five different hearings

1 on it. So I don't want to beat any -- the case has
2 been dismissed for six months now --

3 THE COURT: Right.

4 MR. TOOSLEY: -- so at the end of
5 the day, you know, I'm hopeful that we can come to
6 some end on the issues.

7 THE COURT: I would be with you on
8 that.

9 MR. TOOSLEY: I assumed you would.

10 So, we have -- to give you an update
11 as to what's happened since the last two months or
12 so, we -- the case did, obviously, start back up in
13 state court. We had our foreclosure sale, and the
14 court date for the confirmation of that sale is set
15 for September.

16 THE COURT: Okay.

17 MR. TOOSLEY: So everything is
18 proceeding there. And just for making sure that
19 we're all on full disclosure, the fees that we
20 incurred in relation to this we have rolled into our
21 fee request in the state court case for the
22 deficiency judgment and on the guarantee against Mr.
23 Krone.

24 So, I just am making -- I know that
25 we mentioned attorney's fees the last two times.

1 THE COURT: Right.

2 MR. TOOSLEY: And I just -- for
3 full disclosure purposes, I am also asking for
4 those as part of the deficiency to be entered in
5 the state court case just because I don't want
6 that to be --

7 THE COURT: Right.

8 MR. TOOSLEY: -- ignored in
9 everybody's head on that front.

10 And that's kind of where we're
11 standing. Mr. Krone's entity is acting as the
12 property manager for the receiver, so we are still
13 discussing the possibility of potentially working
14 something out. But at this point everything is
15 proceeding.

16 THE COURT: So, I guess my question is
17 -- and Mr. Sterling can add in -- the answer to the
18 question that was asked has never been provided in
19 terms of the dollars.

20 What are you looking for?

21 MR. TOOSLEY: Well, obviously,
22 originally I'd asked that the \$285,000 be returned.
23 I think -- you know, to the extent that's the only
24 way that we could ever get to a point of being made
25 whole by this.

1 And I know we've said this a few
2 times. You know, the fight was not as to the full
3 285,000, but Your Honor's position was let's just
4 have the state court judge make the decisions, as
5 opposed to keeping the bankruptcy open.

6 To me it was very clear that that was
7 the intent, as I raised it myself specifically that I
8 was afraid that the funds would dissipate, which is
9 exactly what happened the day after the court order
10 was entered.

11 I, to this date, have no idea where
12 the funds still are. I received a cashier's check
13 that was written to PIIC Investors that was dated the
14 day after Your Honor had dismissed the case. And
15 then it was processed about a month later, or
16 something like that.

17 I don't know who PIIC Investors are.
18 I don't know if that's an account that's run by the
19 debtor. I don't know if -- originally, it was
20 represented that the funds were being used to pay
21 back the investors themselves. I have not been given
22 any documentation to show that it ever went from
23 that PIIC Investors account or who PIIC Investors
24 are.

25 So, as we stand here today, I still

1 have no idea where the funds actually ended up. And
2 I know we've talked about the idea of a fraudulent
3 transfer case potentially also being filed, or
4 something like that, in state court after this is all
5 decided. But, like I said, as far as turning over
6 the funds, I just don't even know where they are
7 because the accountings that have been provided only
8 show the money going out, but not -- like, just one
9 cashier's check for \$285,000.

10 THE COURT: Well, I always thought
11 this was pretty simple, that there -- I know that
12 there was -- although there was never an order
13 approving it, but there had been investor monies that
14 had been raised that were going to be used for the
15 financing.

16 MR. TOOSLEY: Correct.

17 THE COURT: And that was my
18 understanding.

19 MR. TOOSLEY: Correct.

20 THE COURT: And I had thought that Mr.
21 Krone wanted to return those to the investors.

22 And I don't think that your client
23 ever really claimed that those were their monies. So
24 to me it was really a matter of transparency, what
25 was taken out.

1 Now, I absolutely wanted that to be
2 decided by the state court, but at this point, I just
3 thought there should have been transparency --

4 MR. TOOSLEY: Right.

5 THE COURT: -- one place or the
6 other.

7 MR. TOOSLEY: And I think this was
8 about half -- about half of the 285,000 or so -- I
9 don't remember the exact numbers -- were these new
10 investments that came in post-confirmation in order
11 to fund the plan. And half of them were
12 pre-confirmation that they claimed to be investors,
13 and we say weren't, that they were our cash
14 collateral.

15 So, that was really where the fight
16 came was to a portion --

17 THE COURT: Right.

18 MR. TOOSLEY: -- of the 285,000, which
19 Your Honor again said this isn't going to be before
20 me. This is all going to be a state court judge
21 determination as to the \$285,000 issue.

22 Up until January, they have never
23 even claimed that they were plan investor money.
24 When they filed the monthly operating report for
25 January it was the first time that they had just

1 kind of written 285,000 plan investors. They have
2 not gotten approval for loans or anything like
3 that.

4 So, all of these issues, Your Honor
5 had said I'm just going to let the state court --
6 just because I am dismissing the case.

7 THE COURT: Right.

8 MR. TOOSLEY: And so our claim for the
9 cash collateral portion of it was only to a portion
10 of the 285,000, not to the full 285. We were willing
11 to concede that the post-confirmation investments
12 that came in could never have been our cash
13 collateral. Right?

14 So, it was because it was specifically
15 identified in the plan that those people would be
16 providing those --

17 THE COURT: Right.

18 MR. TOOSLEY: -- those investments.

19 It was the pre-confirmation all the
20 way back to 2022 that we were saying couldn't have
21 been considered an investment into the plan because,
22 you know, it was a year before the plan was
23 confirmed.

24 So that's -- you know, as it stands
25 here today, the only accounting we have is where the

1 \$285,000 came from, the number. And then it was sent
2 to this entity for whatever it is, because it's not a
3 registered company. PIIC Investors is not registered
4 by the State of Illinois. I have no idea what that
5 is or -- PIIC would be Platform Investments --
6 Platform II Lawndale. PIIL -- what did I say -- I
7 know that's -- PIIL is Platform II Lawndale. What I
8 don't know is where the funds went.

9 THE COURT: And all my order really
10 says is provide this accounting for the period of
11 January 31st through February 29th, and that has
12 never been forthcoming.

13 MR. TOOSLEY: They sent me the bank
14 statements --

15 MR. STERLING: That's not accurate,
16 Your Honor. We -- if I -- a couple of things.

17 One, despite what counsel has said,
18 there was no rule entered against Mr. Krone.

19 THE COURT: I'm aware of that.

20 MR. STERLING: The rule was entered
21 against Platform II -- Platform II Lawndale.

22 THE COURT: Right.

23 MR. STERLING: Mr. Krone is here based
24 on Your Honor's order from last time ordering him to
25 appear today. He is here.

1 The other issue -- the other thing
2 that I take issue with is Mr. Toosley's ever moving
3 interpretation of what this 285 is. They only claim
4 the rents. But as we've indicated in our response,
5 as well as the affidavit that was attached or the
6 affidavit that was attached by Mr. Krone or the
7 declaration that was filed back in April when this
8 first became an issue, we identified when -- which --
9 the source of and the amount of all these investor
10 funds.

11 Now, some did come in prior to the
12 plan's approval. However, the plan was originally
13 presented back in October of '22. And from that
14 point forward, once the plan was in its conceptual
15 form, Platform II Lawndale started raising money to
16 fund this plan.

17 It was the lender who kept coming back
18 with revisions to the plan. Ultimately, it did get
19 approved. And there were more monies that came in
20 afterwards. But based on this, and the evidence
21 that's before -- evidence that's before the court
22 based on the declaration of Mr. Krone and based on
23 our response, these were to the penny the funds that
24 came in from investors.

25 They can't contradict that. And we've

1 given them the amount. They have the bank statements
2 that everything ties out that these were investor
3 funds.

4 We've also provided them with the --
5 the information where the money went. It went to
6 this investor account that is separate and apart and
7 where the -- the owners of the PIIL Investor account,
8 those are the investors identified here in our
9 response and in Mr. Krone's declaration. So they
10 have that information.

11 They don't have any evidence that
12 we've done anything improper because I --

13 THE COURT: Shouldn't it be clear,
14 though, on both sides that this is the money that
15 came in, and this is the money that went to this
16 other account?

17 MR. STERLING: Each of the investors
18 funded this individually. However, as I understand
19 it, the investors had a separate entity, this
20 Platform II Investor -- the PIL -- PIIL Investor
21 account. They're all members of that --

22 THE COURT: Is that an LLC?

23 MR. STERLING: I believe it is.

24 MR. TOOSLEY: I looked this morning.
25 There's no registered LLC with that name.

1 MR. STERLING: Maybe not in
2 Illinois.

3 THE COURT: Well, then maybe somebody
4 should just tell Mr. Toosley where it's incorporated.
5 We're not trying to --

6 MR. STERLING: I'm not trying to be
7 coy here. I don't know where it was. But it has
8 a bank account. It needs to be organized somewhere.

9 THE COURT: Right.

10 MR. STERLING: It does not need to
11 be authorized to transact business in the State
12 of Illinois if all it is owns a membership
13 interest.

14 So, I mean, for him to say it's not
15 an entity, that's -- that's an over-- that's a high
16 -- yet another hyperbolic statement --

17 THE COURT: Okay. Well, to me this
18 war should end pretty soon.

19 MR. TOOSLEY: Agreed.

20 MR. STERLING: Well, I --

21 THE COURT: Just like money came in
22 from Mr. Jones, money went back to an account that
23 Mr. Jones has some kind of interest in as an
24 investor. Were there monies that were there
25 originally that were part of the rents? I don't

1 really know. And I --

2 MR. STERLING: But we've provided this
3 information to Mr. Toosley.

4 MR. TOOSLEY: I mean, the issue is
5 that, again, they're calling -- they're
6 characterizing them as investors. But what they're
7 doing is because they had to pay a bunch of other
8 bills, they're saying we're just counting -- we paid
9 all the bills just out of your cash collateral, we
10 didn't pay it out of these other funds, even though
11 they needed those funds to make the adequate
12 protection payments.

13 As we've said, they were not plan
14 contributions. They were loans that were not
15 approved by the court or else they could not make
16 the adequate protection payments. They only --
17 they went and they made a few, right? Then they
18 stopped.

19 They didn't have enough -- the
20 property didn't generate enough cash to make the
21 adequate protection payments, so they did go to other
22 parties, their investors, didn't tell us this, and
23 that's how they got the money.

24 And this plan, Section 15,
25 specifically said that all previous funds that were

1 provided got no value in the plan moving forward.
2 So, they basically are repaying people with the plan
3 that was confirmed, which it was --

4 THE COURT: Right.

5 MR. TOOSLEY: -- would never have saw
6 this money. All of those pre-confirmation ones were
7 not standing -- the only people who were getting
8 equity in this reorganized debtor were the new -- new
9 money that came in after the fact.

10 Again, this is an issue why it was
11 supposed to be decided in state court, Judge, so we
12 could do discovery. We could take a deposition.
13 We could do whatever we needed to do to figure this
14 out. We are supposed to just take somebody's
15 at-face-value affidavit that doesn't match up with
16 the fact that they just called them plan
17 contributions on their own.

18 MR. STERLING: He's not foreclosed
19 from doing that, Your Honor, in state court. But we
20 are where we are at today. The money went back to
21 the investors. Platform II Lawndale does not have
22 control of those funds.

23 Your Honor suggested, provide the
24 accounting to purge this contempt. We provided --
25 we provided the accounting. We provided the

1 statements. We provided the information that we
2 have. The problem is that the goalpost keeps moving,
3 and I don't know what to do. And I don't know how to
4 respond to the court or to Mr. Toosley when I
5 can't -- he can't be satisfied.

6 If he believes that the investor --
7 that this was not -- that these were not rents to
8 which his client has claims over, then -- because he
9 keeps saying, well, they were rents or they were
10 loans or they -- you know, he doesn't know where
11 it -- what -- he doesn't even know what he's saying
12 anymore as far as the characterization of this
13 money.

14 We have been clear since day one
15 as to the characterization of the money. If he
16 doubts that, let him file his action in state
17 court and bring it up in the state court action
18 because --

19 THE COURT: Well, I believe the
20 plan -- I'm looking for the order that confirmed it
21 -- that I have probably retained jurisdiction over
22 the plan. And if, in fact, the plan -- not that I'm
23 really looking to continue this, but there may be --
24 you know, there was -- there was a disclosure
25 statement.

MR. STERLING: If I may, Your Honor, quote from the February 14th transcript after you dismissed the case with prejudice, "so the only jurisdiction I'm retaining is Mr. Jordan's fees."

THE COURT: Well --

MR. STERLING: That's what the --

MR. STERLING: Well --

13 MR. TOOSLEY: And I think there's a
14 lot of cherry-picking involved if you're only looking
15 at that one part of the transcript, because,
16 obviously, we spent a lot of time in that hearing
17 about this exact issue.

THE COURT: Right.

19 MR. TOOSLEY: And your order
20 specifically identified what was going to happen
21 even post-dismissal with these funds. So, whether
22 you're retaining jurisdiction or not, it's going to
23 have to be to enforce the terms of that order.

THE COURT: Yes.

25 MR. STERLING: But --

MR. TOOSLEY: You have the right to do that.

MR. STERLING: -- the problem is -- and I'm not disputing the court's ability to enforce its orders, but as I've pointed out previously, the order says to turn over all funds in the debtor's bank account when the receiver is reappointed.

THE COURT: But that's not what I said that day. What I meant that day, and it's been very clear and I really don't want to go over this again --

MR. STERLING: But I'm reading --

THE COURT: -- whatever money you have today, that's what's to be turned over to the receiver. Now, we knew the receiver was not going to be appointed within 45 seconds. It was going to take a couple of days to go down the street to get the receiver.

I certainly feel like I've been very much misinterpreted to say that I was giving the debtor a two-day window or three-day window to take money that they were holding on the day I entered that order.

MR. STERLING: Okay.

THE COURT: And I know that you

1 disagree with me, but that was -- that was the order.
2 There was no misunderstanding that day that money
3 should slip out of that account. It was very clear
4 the state court judge was going to decide. I didn't
5 know what the answer was.

6 And I don't think that I -- I
7 certainly never intended for the bank to hold on to
8 investor funds. I don't think Mr. Toosley or his
9 client thought that they should hold on to it. But
10 the whole idea was let's figure out what are investor
11 funds and what are rents.

12 And while that was being moved down
13 the street to the Daley Center, the money slipped
14 out of the account. And all this whole exercise
15 has been about is what was that money, and that's
16 the --

17 MR. STERLING: Understood.

18 THE COURT: -- that's the question to
19 answer.

20 MR. STERLING: Understood.

21 Your Honor, and here is where part of
22 the confusion lies. And now I'm reading from Your
23 Honor's May 1st, 2024, order regarding the motion
24 that was filed by Mr. Morgan related -- this was the
25 investors' motion.

1 THE COURT: Right.

2 MR. STERLING: It says -- and I am
3 citing from the last paragraph, full paragraph of the
4 order. It says, for all these reasons, the court
5 entered an order dismissing the case but required
6 that the state court receiver be in place prior to
7 the effective date of the dismissal order and that
8 all funds held in debtor's accounts be turned over
9 to the state court receiver.

10 Well, the problem there is the order
11 doesn't delay the effectiveness of the dismissal.
12 The actual order itself --

13 THE COURT: The order said the money
14 held in the debtor's account should be turned over to
15 the receiver. I didn't -- certainly it would not
16 have made sense for me to say take five or six days
17 and take whatever you want out of the account --

18 MR. STERLING: I understand.

19 THE COURT: -- and give the rest to
20 the receiver.

21 MR. STERLING: I understand. I
22 understand that there may have not been explicit
23 permission, but there was also --

24 THE COURT: You weren't there that
25 day.

1 MR. STERLING: I wasn't. I read the
2 transcripts, though.

3 THE COURT: Well --

4 MR. STERLING: And that's all I
5 can --

6 THE COURT: -- you --

7 MR. STERLING: But, Your Honor, if I
8 can finish, the issue that's before the court right
9 now is to whether or not there's been a contempt and
10 whether or not that contempt can be purged. There is
11 no prohibition -- and based on my client's
12 understanding and --

13 THE COURT: All I'm asking for is
14 an accounting. There is not -- it says -- my order
15 says, the one I'm looking at that was entered on May
16 15th, the debtor must provide an accounting to
17 Greenlake of all funds held in any debtor account --
18 because I don't know all of the accounts. I would
19 say that the debtor was not actually providing
20 monthly operating reports -- which were really
21 helpful, putting it mildly -- for the period of
22 January 31 through February 29th.

23 What was in any of the debtor's
24 accounts during that period of time?

25 MR. STERLING: And we provided those

1 statements to Mr. Toosley.

2 MR. TOOSLEY: They did send them.

3 THE COURT: Okay, so maybe we're
4 done.

5 MR. TOOSLEY: So, you know, like I
6 said, the issue to me is, you know, they keep saying
7 well, we gave it back to the investors, but they
8 won't give us the information to say that.

9 So, at this point, you know, we are --
10 you know, they put it in this PIIC account and then
11 said, well, that's it; we don't have to tell you
12 anything else.

13 So, you know, that was really where
14 this all kind of went --

15 THE COURT: So you're pushing it all
16 into one account instead of saying we returned it to
17 Mr. Jones or Mrs. Smith.

18 MR. TOOSLEY: Right.

19 THE COURT: It's just all in this
20 account.

21 MR. TOOSLEY: Correct.

22 THE COURT: Well, it should be --
23 there must be claims against that account. Just
24 tell -- just provide the transparency, and then you
25 can fight it out down the street.

1 But my order said provide that
2 accounting, including the source of funds and bank
3 statements. The accounting should state to whom or
4 what account funds were transferred during the
5 accounting period.

6 Now, I suppose you could say I said
7 you could put it in a fund, an account with
8 everything in it and not tell anybody, but I think
9 what we were looking for was what happened to the
10 funds, what funds were there.

11 MR. TOOSLEY: Especially, this is a
12 debtor -- it's a debtor-controlled PIIC account. It
13 still would be --

14 MR. STERLING: I don't represent the
15 PIIL, LLC, account, investors account. And it's not
16 the debtor's account.

17 THE COURT: I'm not holding you in
18 contempt.

19 MR. STERLING: No, I understand, but I
20 am just saying it's not controlled by Platform II
21 Lawndale. It's not the debtor's account because it
22 was instructed by the investors to transfer the
23 monies to this account.

24 THE COURT: Okay, well, then maybe
25 your client is against the investors.

MR. STERLING: I said Mr. Krone is the managing member of this LLC and the investors, so I'm not entirely sure he's subject to the court's jurisdiction.

MR. TOOSLEY: Managing member of
Platform --

MR. STERLING: Correct, the debtor.

8 MR. TOOSLEY: Right. And he's also an
9 investor under the documents. He filed -- he was one
10 of the movant's in the motion to reconsider. So, you
11 know, I think having some clarification from Mr.
12 Krone about his relationship that this PII --

13 THE COURT: Put Mr. Krone on the
14 stand. You can take his testimony this afternoon if
15 you want.

16 MR. TOOSLEY: You know, at the end
17 of the day, to me the biggest issue is based on
18 what's gone on -- I mean, obviously, I think I'd be
19 entitled to fees, and we've raised this before. But
20 I don't want to -- I don't want to spend time on
21 fees, especially if I'm going to be getting it in
22 the state court case.

MR. STERLING: Right.

THE COURT: Yes.

MR. TOOSLEY: And, you know, I asked

1 last time about the court considering a six-month ban
2 on refiling, or something like that, as it relates to
3 Platform II as a sanction for this sort of action
4 that had been done.

5 And so if Your Honor would even
6 consider something like that, I could say we could
7 be done, you know, as far as -- you know, I don't
8 care about getting a contempt order on Mr. Krone if
9 we can do this.

10 Again, I'm going after the fees in
11 the state court case. I think that the finding
12 that the contempt happened and that this is the
13 remedy associated with it would probably be more
14 than sufficient, and then we could be done with
15 it.

16 THE COURT: I don't really have a
17 problem with that if, you know, Platform II ever
18 wants to be in this court again before me or another
19 judge.

20 MR. TOOSLEY: Correct.

21 MR. STERLING: Can I have five minutes
22 to discuss with --

23 THE COURT: Absolutely.

24 Do you want to -- yes, that's fine.
25 We'll take a recess for five minutes.

1 MR. TOOSLEY: Thank you.

2 MR. STERLING: Thank you.

3 THE CLERK: All rise. The court is in
4 recess for five minutes.

5 (Brief recess.)

6 (End of Audio Recording.)

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3 CERTIFICATE
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5 I, AMY DOOLIN, CSR, RPR, do hereby
6 certify that the foregoing is a true and accurate
7 transcription of proceedings electronically recorded
8 on July 10, 2024, submitted to D&E Reporting for
9 transcription, and contains all the content contained
10 in said recording and has been transcribed to the
11 best of my ability.

12
13

14 /s/Amy Doolin, CSR, RPR
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